

Add Section 62.3 to the Revenue and Taxation Code to provide an exclusion from a change in ownership when two individuals own a principal residence together (as joint tenants or tenants in common) and the property transfers from one cotenant to the other upon the death of the transferor cotenant with the survivor cotenant obtaining sole ownership of the property.

Source: Honorable Betty Yee

Existing Law

Under existing property tax law, real property is reassessed to its current fair market value whenever there is a “change in ownership.” Generally, a transfer of interest between two people that own real property due to the death of one results in a change in ownership in proportion to the percentage interest transferred unless the transfer qualifies for one of the many change in ownership exclusions available under existing law. These include exclusions for transfers of interests between persons that are spouses, between persons that are registered domestic partners, between persons that have a parent-child relationship, and between persons that own property in a joint tenancy form of ownership where the surviving joint tenant has original transferor status. (When a person has “original transferor status” a termination of a joint tenancy interest that results in the property transferring to the original transferor does not result in a change in ownership of the property when the surviving joint tenant becomes the sole owner of the property by rights of survivorship under Revenue and Taxation Code Section 65(d).) However, there are no exclusions from change in ownership for transfers of real property owned between two unrelated persons as tenants in common under current law.

This Proposal

This proposal would add Section 62.3 to the Revenue and Taxation Code to provide that a transfer of a cotenancy interest, as defined, in real property from one cotenant to the other that takes effect upon the death of the transferor cotenant would be excluded from reassessment as a “change in ownership” if the real property constitutes the principal residence of both cotenants. The proposed change in ownership exclusion would be available if the following conditions are satisfied:

- **Principal Place of Residence.** The property constitutes the principal residence of both cotenants immediately preceding the transferor cotenant’s death and both continuously resided at that residence for the one-year period immediately preceding the date of death. The transferee must sign an affidavit affirming that these requirements have been met.
- **Ownership.** For the one-year period immediately preceding the transferor cotenant’s death both cotenants were owners of record of the property.

- **Form of Ownership.** The property must be held in a tenant in common or joint tenancy form of ownership by the cotenants, with no other individual holding title to the property. That is, two individuals must together own either 100 percent of the real property in joint tenancy or 100 percent of the real property as tenants in common.
- **Death.** The transfer must occur due to the death of one of the cotenants and the surviving cotenant must thereafter obtain a 100 percent ownership interest in the real property immediately after the transfer.
- **Method of Acquisition.** Upon the death of the transferor cotenant, the property must be acquired via the transferor cotenant's will or trust; intestate succession; or by other operation of law.
- **Any Other Available Exclusion Has Priority.** The cotenancy exclusion would not apply if any other provision in the Revenue and Taxation Code provides a change in ownership exclusion such as the interspousal, registered domestic partner, or parent-child exclusions, and the joint tenancy exclusion where the surviving joint tenant has original transferor status.

In practical application, the proposed change in ownership exclusion would apply to any number of situations in which two people own a principal place of residence and one person dies leaving interest in the property to the other. Examples include seniors, veterans, or others who own a home together and choose not to marry because of the loss of various benefits; persons who choose not to marry for other reasons or may be unable to marry legally; persons with familial relationships, such as siblings or other relations; persons who choose not to register as domestic partners; persons ineligible to register as domestic partners; friends or companions; a person and his or her care provider; or any two people who live together to share the cost of housing.

Section 62.3 is added to the Revenue and Taxation Code read:

62.3. (a) Notwithstanding any other provision in this chapter, a change in ownership shall not include a transfer of a cotenancy interest in real property from one cotenant to the other that takes effect upon the death of the transferor cotenant where all of the following conditions apply:

(1) The transfer is solely by and between either of the following:

(A) Two joint tenants who together own 100 percent of the real property in joint tenancy.

(B) Two individuals who together own 100 percent of the real property as tenants in common.

(2) As a result of the death of the transferor cotenant, the deceased cotenant's tenancy in common or joint tenancy interest in the real property is transferred to the surviving cotenant, which results in the surviving cotenant holding a 100 percent ownership interest in the real property immediately after the transfer, thereby terminating the cotenancy.

(3) For the one-year period immediately preceding the transfer, the real property was coowned by the transferor and the transferee, and both cotenants have been the owners of record of that real property.

(4) The real property constituted the principal residence of both cotenants immediately preceding the transferor cotenant's death.

(5) The transferor and the transferee continuously resided at that residence for the one-year period immediately preceding the transfer.

(6) The transferee has signed, under penalty of perjury, an affidavit affirming that he or she continuously resided with the transferor at the residence for the one-year period immediately preceding the transfer.

(b) A transfer of cotenancy interest in real property from one cotenant to the other shall take effect upon the death of the transferor cotenant under any of the following circumstances:

(1) Pursuant to the transferor cotenant's will or trust upon the death of the transferor cotenant.

(2) Through intestate succession from the transferor cotenant.

(3) By operation of law upon the death of the transferor cotenant.

(c) The exclusion provided by this section shall not apply to any transfer of real property interests for which a separate exclusion in this chapter applies.

(d) For purposes of this section, both of the following apply:

(1) "Cotenancy interest" means an interest in real property held only as tenants in common or joint tenants.

(2) "Principal residence" means a dwelling eligible for either the homeowners' exemption or the disabled veterans' exemption.